

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

James Mammone,

Case No. 5:16CV900

Petitioner

v.

JUDGMENT ENTRY

Charlotte Jenkins, Warden,

Respondent

In accordance with the order filed contemporaneously with this judgment entry, it is hereby ORDERED THAT:

1. The amended petition for a writ of habeas corpus (Doc. 23) be, and the same hereby is, denied.
2. The motion for discovery (Doc. 35) be, and the same hereby is, denied with prejudice.
3. A certificate of appealability be, and the same hereby is, issued on the following claims:
 - A. Whether the state trial court should have presumed that the pretrial publicity about Mammone's case prejudiced his ability to receive a fair trial in Stark County.
 - B. Whether the jurors violated Mammone's right to a fair trial by praying before their penalty-phase deliberations.

- C. Whether trial counsel were ineffective for: (a) failing to raise a defense of not guilty by reason of insanity; (b) failing to retain a neuropsychologist to evaluate Mammone; and (c) allowing Mammone to make an unsworn statement at the penalty phase or failing to prepare him to give a more effective statement. Because the first and second of these claims are procedurally defaulted, the certificate will also encompass the debatable question whether the defaults can or should be excused under *Trevino v. Thaler*, 569 U.S. 413 (2013), or some other basis.
- D. Whether appellate counsel was ineffective for not arguing that trial counsel were ineffective for urging the jury to consider Mammone's mental state as mitigation evidence under O.R.C. § 2929.04(B)(3) where the defense's own evidence foreclosed the jury's ability to do so.

So ordered.

/s/ James G. Carr
Sr. U.S. District Judge